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7  
8 UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF WASHINGTON  
10

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 vs.  
14

15 JOSE ANTONIO SALDANA,

16 Defendant.  
17

1:24-CR-02040-MKD

PLAINTIFF'S SENTENCING

MEMORANDUM

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19 The United States of America, by and through Richard R. Barker, Acting  
20 United States Attorney for the Eastern District of Washington, and Michael D.  
21 Murphy, Assistant United States Attorney, submits the following Sentencing  
22 Memorandum.  
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25 Defendant was convicted of the four counts charged in the Indictment (ECF  
26 1) filed May 14, 2024 following a jury trial held March 10-12, 2025. ECF 64, 67,  
27 71, 72. In Counts 1 and 2, he was convicted of Abusive Sexual Contact, in violation  
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1 of 18 U.S.C. §§ 1152, 2244(a)(5), and 2246(3). ECF 73. In Count 3, he was  
2 convicted of Abusive Sexual Contact, in violation of 18 U.S.C. §§ 1152,  
3 12244(a)(3), and 2246(3). *Id.* In Count 4, he was convicted of Attempted  
4 Aggravated Sexual Abuse in violation of 18 U.S.C. §§ 1152, 2241(c). *Id.*  
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7 I. BASE OFFENSE LEVEL AND ENHANCEMENTS  
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9 The draft PSIR provides for a total offense level of 43, criminal history  
10 category of V, with a guideline range of incarceration of life as to Counts 1, 2 and 4  
11 and a guideline range of incarceration of 24 months at to Count 3, to be followed by  
12 5 years to life of supervised release as to all counts. Draft PSIR, ECF 76, ¶ 168.  
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14 The United States agrees with the calculations in the Draft PSIR.  
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17 II. DEPARTURES AND OBJECTIONS

18 The United States does not seek any departure in this matter or, alternatively,  
19 any variance. Further, the United States does not have any objections to the draft  
20 PSIR. The Guidelines are the starting point and the initial benchmark for the  
21 sentencing process. *Kimbrough v. United States*, 128 S. Ct. 558 (2007). The Court  
22 “take[s] into account the totality of the circumstances” to determine whether a  
23 sentence is reasonable. *Gall v. United States*, 128 S. Ct. 586, 597 (2007). Upon  
24 appellate review, “the scheme of downward and upward ‘departures’ [is] essentially  
25 replaced by the requirement that judges impose a ‘reasonable’ sentence.” *United*  
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1 *States v. Ellis*, 641 F.3d 411, 421 (9th Cir. 2011). A reasonable sentence under the  
2 facts of this case is one as recommended by the Sentencing Guidelines- that of life  
3 imprisonment.

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5 III. SENTENCING FACTORS UNDER 18 U.S.C. §3553(a)

6 1. The nature and circumstances of the offense and the history and  
7 characteristics of Defendant.

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9 The Court has heard the testimony and observed the demeanor of the three  
10 victims of the charged conduct at trial. Their testimony described repeated instances  
11 of sexual abuse and contact by Defendant when they were children and young girls  
12 visiting or living in the same household as Defendant. As described in the draft PSIR,  
13 seven other women reported sexual abuse or attempted sexual abuse or contact by  
14 Defendant. Of those, six described sexual abuse or contact when they were very  
15 young, similar ages to those of the victims of the charged conduct at the time of their  
16 abuse. A.W. disclosed a sexual assault by Defendant in 2017. ECF 76, ¶ 69. A.Y.W.  
17 described Defendant touching her genitals and biting her ear when she was five years  
18 old. *Id.* at ¶ 71. M.L. described Defendant giving her “boyfriend type” kisses when  
19 she was eight or nine years old and seeing him kissing A.W. in a similar fashion. *Id.* at  
20 ¶ 72. G.Y., who was a young adult, reported that Defendant had sent her unsolicited  
21 “dick pics” after dating her mother. *Id.* ¶¶ 73-74. A.T. reported being sexually  
22 assaulted by Defendant when she was around twelve years old. *Id.* ¶¶ 75-76. A.A.  
23 reported that Defendant attempted to have sex with her multiple times when she was a  
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1 child and under twelve years old. *Id.* at ¶¶ 77-78. R.T. reported being repeatedly  
2 sexually assaulted by Defendant from the ages of three to four until twelve to thirteen.  
3 She described Defendant kissing her on the mouth and using his tongue as well as  
4 touching her genitals. *Id.* at ¶¶ 79-81. R.T. also described disclosures of sexual abuse  
5 by Defendant from two other girls, V.T. and G.S.. *Id.* at 81.

7 Defendant is a 43-year-old man with a GED who has lived his life in and  
8 around Wapato, Washington and in the Yakima Valley. ECF 76, p. 3, ¶¶ 112, 113. He  
9 has a limited history of criminal convictions, involving no felonies, and no significant  
10 history of substance abuse apart from a conviction related to driving under the  
11 influence of alcohol when he was sixteen years old. *Id.* at ¶¶ 85-100, 123-124.  
12 However, as shown by the testimony at trial and as recounted by multiple other  
13 victims, he has sexually abused female children in his households for decades. It is  
14 this history and characteristic of Defendant which merits a sentence of life  
15 imprisonment.  
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18 “[A] sentencing court may rely on *any* evidence relating to a defendant’s  
19 background, character, and conduct when considering the sentencing factors found  
20 in 18 U.S.C. § 3553(a).” *United States v. Christensen*, 732 F.3d 1094, 1104 n. 2 (9th  
21 Cir. 2013) (emphasis added). Sentencing courts are permitted to consider the widest  
22 possible breadth of information about a defendant to ensure that the punishment will  
23 suit not only the offense, but also the individual defendant. *Pepper v. United States*,  
24 562 U.S. 476, 488 (2011). Accordingly, by statute Congress directs that “[n]o  
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1 limitation shall be placed on the information concerning the background, character,  
2 and conduct of a person convicted of an offense which a court of the United States  
3 may receive and consider for the purpose of imposing an appropriate sentence.” 18  
4 U.S.C. § 3661. Even “a jury's verdict of acquittal does not prevent the sentencing  
5 court from considering conduct underlying the acquitted charge, so long as that  
6 conduct has been proved by a preponderance of the evidence”. *United States v.*  
7 *Watts*, 519 U.S. 148, 157 (1997) (*per curiam*).  
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9

10 Defendant has a criminal history score of 2 and a criminal history category of II  
11 prior to adjustment to a category V on the basis of being a repeat and dangerous sex  
12 offender against minors under USSG 4B1.4. ECF 76, ¶¶ 103-104. He committed his  
13 crimes against children, preying upon their vulnerability and counting upon adults not  
14 believing them if they reported his actions. The profound damage he has caused  
15 multiple women is reflected in the journal entry of Minor 3, introduced at trial as  
16 Exhibit 11, in which she began “Im 14 and ima stay unknown because by lif is really  
17 fucked” before going on to recount Defendant’s sexual abuse of her. As explored in  
18 cross-examination, Minor 3 is currently homeless and out of school. While not solely  
19 attributable to Defendant’s actions, sexual abuse by a trusted adult has undoubtedly  
20 contributed to that child’s difficult life situation. When contacted by the investigating  
21 FBI Agent, R.T. told the agent that she had been waiting for and dreading such a call,  
22 about Defendant and his sexual abuse, for years. A.T. described struggling for years  
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1 and trying to block out what had happened. In her victim impact statement, Minor 2  
2 describes still having nightmares about the traumas she has been through in life.

3 Defendant has not accepted responsibility for his actions. ECF 76, ¶ 66. When  
4 confronted over Facebook Messenger by Minor 2 after initiating contact with her,  
5 Defendant asserted that she was crazy and generally denied doing anything. *Id.* at ¶  
6 18, Trial Exhibit 9. He generally denied any inappropriate or sexual contact with any  
7 underage females when interviewed by law enforcement. ECF 76, ¶ 19.  
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10 The United States submits that there are no mitigating factors in the draft PSIR  
11 which indicate that a sentence outside of the sentencing guidelines is appropriate.  
12 Defendant's history of sexually assaulting vulnerable girls merits a guideline sentence  
13 of life imprisonment. *Cf. United States v. Longee*, 407 F. App'x 122, 124 (9th Cir.  
14 2010) (unpublished) (Affirming a life sentence for aggravated sexual abuse in  
15 violation of 18 U.S.C. §§ 1153(a) and 2241(a) and noting the defendant did not  
16 explain how or why his personal history affected his culpability, or how his history  
17 rendered a Guidelines sentence unreasonable.).  
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- 20  
21 2. The need for the sentence imposed to reflect the seriousness of the offense,  
22 promote respect for the law, and to provide just punishment.

23 A guideline sentence of life imprisonment is appropriate to reflect the  
24 seriousness of the offenses. *Cf. United States v. Woody*, 45 F.4<sup>th</sup> 1166, 1180 (10<sup>th</sup> Cir.  
25 2022) (Affirming concurrent life sentences for a sixty-year-old defendant for  
26 convictions for Aggravated Sexual Abuse and Abusive Sexual Contact of two step-  
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1 daughters). In this case, the United States submits that the Court should conclude from  
2 the manner of testimony by the victims, by their demeanor and the difficulty which  
3 they had in answering questions, and by the statements of the victims of uncharged  
4 conduct in the draft PSIR that Defendant's repeated sexual assaults and the  
5 recollection of those assaults by the victims, both charged and uncharged, has caused  
6 significant trauma to them. Upward departures under the Sentencing Guidelines may  
7 be appropriate based upon multiple sexual contacts with the same victims and upon  
8 extended nature of sexual assaults. *United States v. Waseta*, 647 F.3d 980, 991-92  
9 (10<sup>th</sup> Cir. 2011) (collecting cases). In this case, rather than an upward departure, the  
10 United States submits that the application of a guideline sentence is appropriate.  
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14 In this case, the need for just punishment for Defendant's proven crimes of  
15 sexually assaulting both pubescent and pre-pubescent victims calls for a sentence of  
16 life imprisonment.  
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18 3. The need for the sentence imposed to afford adequate deterrence to criminal  
19 conduct.

20 A sentence of life imprisonment would deter any further criminal conduct by  
21 Defendant. A statutorily minimum sentence may lead Defendant to conclude that his  
22 conduct was so minimal as to justify no more than the least sanction the law will  
23 permit, thereby failing to provide deterrence.  
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25 4. The need for the sentence imposed to protect the public from further crimes  
26 of Defendant.  
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1 Prior conduct, even remote in time, can demonstrate an increased danger of  
2 recidivism. *United States v. Garner*, 490 F.3d 739, 743 (9th Cir. 2007). Further, “the  
3 particularly high danger of recidivism of sex offenders is well-known”. *Id.* As  
4 demonstrated by the facts at trial in this case and contained in the draft PSIR, “[t]he  
5 victims of sex assault are most often juveniles”. *Connecticut Dept. of Public Safety v.*  
6 *Doe*, 538 U.S. 1, 4 (2003) ((citation omitted) (internal quotation marks omitted)  
7 (alteration marks omitted)). “[W]hen convicted sex offenders reenter society, they are  
8 much more likely than any other type of offender to be re-arrested for a new rape or  
9 sexual assault. *Id.*; also see *McKune v. Lile*, 536 U.S. 24, 33-34 (2002) (The risk of  
10 recidivism posed by sex offenders is “frightening and high.”). Defendant’s history of  
11 sexual assaults and attempted sexual assaults of multiple victims over decades  
12 provides a reasonable basis for the Court to conclude that he will present a danger to  
13 vulnerable females upon completion of any period of incarceration. A sentence of life  
14 imprisonment would protect the public from any further crimes by Defendant.

15 To an extent, a correctly calculated guideline, while advisory and not binding  
16 on the Court, establishes a reasonable sentence so long as it is in accord with the  
17 Court’s consideration of the 18 U.S.C. § 3553(a) factors, as the Guidelines are based  
18 upon extensive research and consideration. *See Rita v. United States*, 551 U.S. 338,  
19 356 (2007) (“[W]hen a judge decides simply to apply the Guidelines to a particular  
20 case, doing so will not necessarily require lengthy explanation.”). In this case, the  
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properly calculated guideline sentence of life imprisonment is both reasonable and necessary to protect the public from further crimes by Defendant.

5. The need for the sentence imposed to provide Defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

A sentence of life imprisonment would provide Defendant with effective correctional treatment. Further, should the Court impose a term of imprisonment of less than life, it should impose a term of supervised release that extends for Defendant's life. "Supervised release fulfills rehabilitative ends, distinct from those served by incarceration." *United States v. Johnson*, 529 U.S. 53, 59 (2000). In other words, supervised release is not a punishment in lieu of incarceration. *See United States v. Granderson*, 511 U.S. 39, 50 (1994). Given Defendant's history of sexual exploitation of the vulnerable, supervision for life is appropriate to fulfill the rehabilitative ends of providing sex offender treatment and vocational assistance.

#### IV. GOVERNMENT'S SENTENCING RECOMMENDATION

The government recommends that the Court impose a sentence of incarceration of life followed by a term of supervised release for life and no criminal fine. Defendant must pay a \$400 Special Penalty Assessment and may be required to pay a \$5,000 Special Penalty Assessment pursuant to the JVT. ECF 76, ¶¶ 156-158. The United States does not request the latter assessment in light of its recommendation of a sentence of life imprisonment. Should another sentence be imposed, the \$5,000

JVTA assessment would also be appropriate. Restitution is mandatory; however, no requests for restitution have been received at the time of the filing of this document.

DATED this 27th day of May, 2025.

RICHARD R. BARKER  
Acting United States Attorney

s/Michael D. Murphy  
MICHAEL D. MURPHY  
Assistant United States Attorney

**CERTIFICATE OF SERVICE**

I hereby certify that on May 27, 2025, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System, and a copy was emailed to the counsel of record in this case.

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